Supreme Court, U.S.
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No. 94-779

In The

Supreme Court of the United States

October Term, 1994

ROBERT B. LEBLANC, JOAN S. LEBLANC,

Petitioners,

vs.

WARD LAKE DRILLING, INC.,

Respondent.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit

RESPONSE BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

PETER J. ZIRNHELT
PETER J. ZIRNHELT, P.C.
400 East Eight Street
P.O. Box 1067
Traverse City, MI 49685-1067
(616) 946-8630
(616) 946-3013 (facsimile)

Attorneys for Respondent,
Ward Lake Drilling, Inc.

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QUESTION PRESENTED

Whether the instant Petition should be dismissed because the questions presented by the Petitioners were not ruled upon by the trial court or appeals court, and further because the issues raised are not worthy of this Court's discretionary jurisdiction?

PARTIES

1. Petitioners, Robert L. LeBlanc and Joan S. LeBlanc ("LeBlancs") are individuals who reside in Grosse Ile, Wayne County, Michigan and own property in Otsego County, Michigan.

2. Respondent, Ward Lake Drilling, Inc. ("Ward Lake") is a Michigan corporation having its principal place of business in Gaylord, Otsego County, Michigan.

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RESPONDENT'S BRIEF IN OPPOSITION TO PETITIONERS' REQUEST FOR WRIT OF CERTIORARI

OPINIONS BELOW

Respondent-Appellee relies upon Petitioner-Appellants' statement of prior opinions.

JURISDICTION

Respondent-Appellee relies upon Petitioner-Appellants' statement of jurisdiction.

STATEMENT OF THE CASE

Ward Lake filed suit against Robert B. LeBlanc and Joan S. LeBlanc in the state circuit court for Otsego County, Michigan. *Ward Lake Drilling, Inc. v Robert B. LeBlanc and Joan S. LeBlanc,* case no. 92-5138-CH (filed February 24, 1992). The complaint, based upon the Defendants' erroneous use of Michigan's Lease Forfeiture Statute, Mich. Comp. Laws Sec. 554.281 (*Appendix C*), contained four counts; breach of contract, action to quiet title, unjust enrichment, and a declaratory judgment count, in which the Plaintiff asked the court to declare the above referenced state statute unconstitutional via the state and federal Constitutions.

The LeBlancs, pro se, responded to the state court action by removing it to the federal court on the basis of federal question jurisdiction. Ward Lake then filed a motion for remand, and the Honorable Robert S. Cleland,

federal district court judge for the Eastern District of Michigan, Northern Division, entered an order of partial remand; remanding back to the state circuit court three of the four counts. The federal district court retained jurisdiction of the declaratory judgment count. Soon after, the state of Michigan joined the federal suit, as the constitutionality of a state statute was in issue. Subsequently, after remand, Ward Lake filed a motion for summary disposition[1] in the state court action and the same was granted in its favor. As a result of the state court judgment, which was not appealed by the LeBlancs, the issue retained by the federal district court became moot. Ward Lake circulated a stipulation and order of dismissal to the parties concerning the federal court issue. The stipulation was signed by the state of Michigan, however, the LeBlancs never responded to the stipulation. Ward Lake then filed a motion for dismissal which was granted by the federal district court. The LeBlancs then filed a joint notice of appeal with the federal district court. Ward Lake filed a motion with the Sixth Circuit Court of Appeals requesting that the appeal of the LeBlancs be dismissed. Ward Lake's motion was granted and the LeBlancs requested a rehearing which was denied.

The LeBlancs have taken Ward Lake on a roller coaster ride through the already over burdened federal court system. They have previously filed two other interlocutory appeals to the Sixth Circuit Court of Appeals, both of which were dismissed. In summary, their three

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[1] Michigan Court Rule 2.116, the summary disposition rule, is synonymous with Fed.R.Civ.P. 56, the summary judgment rule.

previous appeals have been dismissed. Now, they rest their Petition on three unintelligible arguments that have no relationship to the action in the lower courts; that is, neither the federal trial court nor the federal appeals court ever ruled on any matters they here present. Furthermore, even if the lower courts had ruled on such issues, they are inappropriate for the Court's exercise of its discretionary jurisdiction.

SUMMARY OF ARGUMENT

I. This case presents no issue appropriate for the Court's exercise of its discretionary jurisdiction.

ARGUMENTS AND AUTHORITIES

I. Reasons for denial of Writ of Certiorari.

This case presents no previously undecided question of law. Further, it contains no issue which was adjudicated at the trial court, or ruled upon by the appeals court. The decision of the Sixth Circuit Court of Appeals does not conflict with any other court of appeals ruling on the same matter. The decision of the appeals court involves no important or compelling question of federal law which has not been, but should be settled by this Court.

The instant Petition is nothing more than a pro se litigant's attempt to raise on appeal to this Court, no matter how frivolous, issues never presented to the

courts below. It can only be concluded that the appeal was undertaken to occasion economic harm upon Ward Lake by having it incur substantial legal fees in responding. The LeBlancs can pride themselves with accomplishing the academic exercise of completing and filing a Petition for a Writ of Certiorari with the United States Supreme Court, but in reality all they have done is wasted the valuable time and resources of this Court and the Respondent. There can be no dispute that the issues raised by the LeBlancs in their Petition to this Court were never fully developed in either the federal trial court, or the federal appeals court as is evidenced by the lower court orders appended to LeBlancs' Petition. Additionally, even if the issues had been ruled upon, they are not of the nature to fall within this Court's discretionary jurisdiction.

It is well settled that jurisdiction to review judgments and decrees of the court of appeals by certiorari is to be exercised sparingly, and only in cases of gravity and general importance, or in order to secure uniformity of the decision. *Re Lau Ow Bew*, 141 U.S. 583, 12 S.Ct. 43, 35 L.Ed. 868, (1891); *Re Woods*, 143 U.S. 202, 12 S.Ct. 417, 36 L.Ed. 125 (1892); *Lau Ow Bew v United States*, 144 U.S. 47, 12 S.Ct. 517, 36 L.Ed. 340 (1892); *American Construction Company v Jacksonville, T. & K. W. R. CO.*, 148 U.S. 372, 13 S.Ct. 758, 37 L.Ed. 486 (1893); *Forsyth v Hammond*, 166 U.S. 506, 17 S.Ct. 665, 41 L.Ed. 1095 (1897); *Fields v United States*, 205 U.S. 292, 27 S.Ct. 543, 51 L.Ed. 807 (1907); *Hamliton Brown Shoe Company v Wolf Bros. & Company*, 240 U.S. 251, 36 S.Ct. 269, 60 L.Ed. 629 (1916); *Seney v Swift & Company*, 260 U.S. 146, 43 S.Ct. 22, 67 L.Ed. 167 (1922)

Clearly, because none of the issues raised by the LeBlancs in their Petition are of a genre that merit review by this Court, said Petition should be dismissed.

II. The issues presented by the LeBlancs in their petition are unintelligible, and were unresolved by the trial court or appeals court.

Ward Lake maintains that those issues raised by the LeBlancs were never ruled upon by either the trial court or the appeals court. Since the issues were never ruled upon, the result of raising undecided issues in the Petition should be dismissal. In effect, because the issues were never adjudicated, the Petition by the LeBlancs is technically deficient. It is required that the petition exhibit clear, definite, and composite disclosure and questions in controversy. *First National Bank v Chicago Title & Trust Company,* 198 U.S. 280, 25 S.Ct. 693, 49 L.Ed. 1051 (1905); *Southern Power Company v North Carolina Public Service Company,* 263 U.S. 508, 44 S.Ct. 164, 68 L.Ed. 413 (1924). Since the present Petition does not exhibit clear issues of questions in controversy, it should be dismissed.

CONCLUSION AND PRAYER

This case presents no issues which have been ruled upon by the federal trial court or federal court of appeals. Ward Lake prays that this Honorable Court deny the LeBlancs' Petition for Writ of Certiorari, and assess costs

against the LeBlancs because the Petition is frivolous and presents no issues appropriate for the Court's review.

Respectfully submitted,

PETER J. ZIRNHELT, P.C.
PETER J. ZIRNHELT (P24847)
Attorney for Respondent
Ward Lake Drilling, Inc.
400 East Eight Street
P.O. Box 1067
Traverse City, MI 49685-1067
(616) 946-8630

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APPENDIX TO BRIEF IN RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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Appendix A

Attached to Petitioners' Petition for Writ of Certiorari

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Attached to Petitioners' Petition for Writ of Certiorari

Appendix C

MCL 554.281

Oil, gas, or mineral lease; forfeiture; procedure for surrender, effect on record .....App. 1

MCL 554.281 Oil, gas, or mineral lease; forfeiture; procedure for surrender, effect on record

Sec. 1. When any oil, gas or other mineral lease heretofore or hereafter given on land situated in any county of Michigan and recorded therein shall become forfeited, it shall be the duty of the lessee, his successors or assigns, within 60 days from the date of the taking effect of this act, if the forfeiture occurred prior thereto, and within 30 days after the date of the forfeiture of any other lease, to have such lease surrendered in writing, such surrender to be signed by the party making the same, his successors or assigns, witnessed and acknowledged and placed on record in the county where the leased land is situated, without cost to the owner thereof: Provided, That if the said lessee, his successors or assigns shall fail or neglect to execute and record such surrender within the time provided for, then the owner of said land may at any time after forfeiture serve upon said lessee, his successors or assigns, in person, or by registered letter, at his last known address, or by publication for 3 consecutive weeks in a newspaper of general circulation in the county where the land is situated, a notice in writing in substantially the following form:

"To . . . : I, the undersigned, owner of the following described land situated in . . . county, Michigan to wit: (description of land) upon which a lease dated the- . . . day of . . . , 19 . . . , was given to . . . , lessee, do hereby notify you that the terms of said lease have been broken by the owner thereof, that I hereby elect to declare and do declare the said lease forfeited and void, and that unless you do within 30 days from this date notify the register of deeds of said county as provided by law, that said lease

has been forfeited, I will file with the said register of deeds an affidavit of forfeiture as provided by law; and I hereby demand that you execute or have executed a proper surrender of said lease and that you put the same on record in the office of the register of deeds on said county within 30 days from this date.

Dated this . . . day of . . . , 19 . . .

And the owner of said land may after 30 days from the date of service, registration or first publication of said notice, file with the register of deeds of the county where said land is situated, an affidavit setting forth that the affiant is the owner of said land; that the lessee, or his successors or assigns, has failed and neglected to comply with the terms of said lease, reciting the facts constituting such failure; that the same has been forfeited and is void; and setting out in said affidavit a copy of the notice served as above provided and the manner and time of the service thereof.

If the lessee, his successors or assigns, shall within 30 days after the filing of such affidavit, give notice in writing to the register of deeds of the county where said lands are located that said lease has not been forfeited and that said lessee, his successors or assigns, still claim that said lease is still in full force and effect, then the said affidavit shall not be recorded, but the register of deeds shall notify the owner of the lands of the action of the lessee, his successors or assigns, and the owner of the land shall be entitled to the remedies now provided by law, for the cancellation of such disputed lease. If the lessee, his successors or assigns, shall not notify the register of deeds as above provided, then the register of deeds

shall record said affidavit and thereupon the said lease shall be null and void and of no legal effect, and thereafter the record of the said lease shall not be notice to the public of the existence of said lease or of any interest therein or rights thereunder, and said record shall not be received in evidence in any court of the state on behalf of the lessee, his successors or assigns against the lessor, his successors or assigns.